

DANIEL ORTIZ LOPEZ

(Name)

California Men's Colony East (Cell 6279)

Post Office Box 8101

(Address)

San Luis Obispo, CA. 93409-8101

(City, State, Zip)

T-26501

(CDC Inmate No.)

FILED

JUN 16 2008

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

ORIGINAL

2354	1983	<input checked="" type="checkbox"/>
FILING FEE PAID		
Yes	No	<input checked="" type="checkbox"/>
HPT MOTION FILED		
Yes	No	<input checked="" type="checkbox"/>
COPIES SENT TO		
Court	ProSe	<input checked="" type="checkbox"/>

United States District Court
Southern District of California

(Enter full name of plaintiff in this action.)

DANIEL ORTIZ LOPEZ

Plaintiff,

v.

PACIFIC SHIP REPAIR & FABRICATION, INC.

(Enter full name of each defendant in this action.)

Defendant(s).

'08 CV 1068 JLS PCL

Civil Case No. _____

(To be supplied by Court Clerk)

Complaint Under the
Civil Rights Act
42 U.S.C. § 1983

A. Jurisdiction

Jurisdiction is invoked pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional authority, list them below.

B. Parties

1. Plaintiff: This complaint alleges that the civil rights of Plaintiff, Daniel Ortiz Lopez
(print Plaintiff's name)
, who presently resides at California Men's Colony East
(mailing address or place of confinement)
P.O. Box 8101, San Luis Obispo, CA. 93409-8101, were violated by the actions
of the below named individuals. The actions were directed against Plaintiff at 1625 Rigel St.
San Diego, California 92113 on (dates) Feb.02-01, and
(institution/place where violation occurred) (Count 1) (Count 2) (Count 3)

2. Defendants: (Attach same information on additional pages if you are naming more than 4 defendants.)

CR

Defendant **PACIFIC SHIP REPAIR & FABRICATION, INC. (A Corporation)** resides in **San Diego**
(name) (County of residence)
and is employed as a **Corporation** This defendant is sued in
(defendant's position/title (if any))
his/her ☐ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting
under color of law:

Defendant had a responsibility to protect, oversee, and care for the well-being of plaintiff and failed to take reasonable care which led to plaintiff being deprived of his liberty and freedom.

Defendant **N/A** resides in
(name) (County of residence)
and is employed as a This defendant is sued in
(defendant's position/title (if any))
his/her ☐ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting
under color of law:

Defendant **N/A** resides in
(name) (County of residence)
and is employed as a This defendant is sued in
(defendant's position/title (if any))
his/her ☐ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting
under color of law:

Defendant **N/A** resides in
(name) (County of residence)
and is employed as a This defendant is sued in
(defendant's position/title (if any))
his/her ☐ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting
under color of law:

C. Causes of Action (You may attach additional pages alleging other causes of action and the facts supporting them if necessary.)

Count 1: The following civil right has been violated: Plaintiff's Constitutional Right (E.g., right to medical care, access to courts, to not be Deprived of his Liberty (Freedom) under Fourteenth Amendment. due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 1. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Count 1.]

On February 02, 2001, plaintiff Daniel Ortiz Lopez was employed at the Pacific Ship Repair & Fabrication, Inc., as a welder. Plaintiff punched in at work at approximately 5:30 am Plaintiff began to perform his welding duties.

At approximately 9:30 am, Hugo Farias, a co-worker at Pacific Ship Repair & Fabrication Inc., approached the plaintiff. Farias told the plaintiff that he was tired and that he had a small bottle Jose Cuervo Tequila tucked away and asked plaintiff if he wanted to have a drink with him.

Plaintiff purchased three Squirt sodas, giving one to Farias, one to co-worker Armando Corrales and keeping one for himself. They each poured tequila into the soda cans. Each one began to drink the tequila and soda. This continued until the tequila was gone. After they had consumed the alcohol, each agreed that they could use another round. During this discussion, plaintiff's supervisor, Auturo Solis was present and personally observed the employees drinking.

Farias left the place of employment and proceeded to a local liquor store where he purchased more alcohol. Plaintiff and farias continued to consume the additional alcohol.

At approximately 2:30 pm, plaintiff approached the time clock to punch off from work. Around the time clock were several employees including supervisor, Auturo Solis, who testified that he noticed a strong smell of alcohol coming from the plaintiff's breath. Supervisor Solis, failed to admonish the plaintiff or inquire as to the plaintiff's consumption of alcohol during work hours. Supervisor Solis was aware that the plaintiff's demeanor was unstable and that his behavior was compromised based on the alcohol that he, the plaintiff had consumed.

As a supervisor, Solis had an obligation to inquire into the stability of the plaintiff prior to allowing the plaintiff to exit the work place with the acknowledgement that he was clearly under the influence of alcohol.

The plaintiff entered his vehicle and started to drive from the work place. Based on the testimony of numerous individuals, the plaintiff was

driving erratically and exceeding the speed limit within the company work place. Supervisor Solis failed to contact the appropriate personnel and report the behavior of the plaintiff or attempt to stop the plaintiff from entering his vehicle. Supervisor Solis was a long time employee at the company and was fully aware that drinking on the job was not only a safety violation, but a reason for immediate termination as well. As supervisor, he was embedded with the responsibility to provide adequate care and pre caution to his subordinates as well as the safety to the company.

Plaintiff exited the workplace. while driving his vehicle, under the influence of alcohol, plaintiff drove through a couple of 'red lights' . Because of plaintiff's intoxicated mentality, he collided with another vehicle. This collision caused damage to the other vehicle. Plaintiff left the accident scene still driving his vehicle somewhat erratically.

Plaintiff approached the intersection of Oceanview and Sampson Street in San Diego. Margarita Zuniga was crossing Oceanview at the intersection with her daughter, son, and a neighbor's two-year old child. Ms. Zuniga was pushing the two year old in a stroller. As she reached the other side of the street with the stroller, her son, Verduzco was slightly behind her. Due to the plaintiff's drunken state of intoxication, he failed to stop at the intersection and hit Verduzco as he was about to step on the curb. Verduzco subsequently died from injuries suffered from the accident.

After the plaintiff hit Verduzco, he subsequently hit a tree. He was transported to the hospital. His blood alcohol level was exceedingly higher than that of an average reading. The plaintiff was arrested, convicted, and sentenced to State prison for violating numerous laws including the murder of Andres Verduzco.

The defendant in this matter, who is the incorporation where the plaintiff was employed during the drinking spree was legally obligated by duty to exhibit some restraint against the plaintiff, through its supervisor, Solis once it was discovered that the plaintiff was too intoxicated to drive from the work place. Supervisor Solis willfully allowed the plaintiff to exit the establishment with full acknowledgement that he was under the influence. The defendant violated their duty under the Skill management of the plaintiff by failing to intervene in a matter which consequently caused the death of an innocent child.

Continued on Attached page

The actions of the defendant does not differ from those of a proprietor of a bar who allows a customer to leave his establishment in a drunken stupor or that of a resident who allows a individual to leave their residence under the influence knowing that their ability to drive is totally compromised by the amount of alcohol he has consumed.

Drinking at the Pacific Ship Repair & Fabrication Inc was against company policy and by the company's failure to interced and stop the plaintiff from driving his car, with the acknowledgement that he was intoxicated, can only be deemed as liable for the damages and injury caused to the parties.

The defendant should have anticipated that the plaintiff's ability to drive his vehicle in a lawful manner, while he was intoxicated, was not something a reasonable individual could have done.

The petitioner was sentenced to state prison for violating the laws of the State of california. He has been deprived of his liberties, including his freedom. The actions, or failure to act, on the part of the defendant in this matter is contributory to the deprivation of his liberty rights and therefore should be held liable for its failure to act on the foreseeable matter.

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Count 2: The following civil right has been violated: N/A
(E.g., right to medical care, access to courts,
due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 2. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Count 2.]

Count 3: The following civil right has been violated: N/A
(E.g., right to medical care, access to courts,

due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 3. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Count 3.]

D. Previous Lawsuits and Administrative Relief

1. Have you filed other lawsuits in state or federal courts dealing with the same or similar facts involved in this case? ☐ Yes ☒ No.

If your answer is "Yes", describe each suit in the space below. [If more than one, attach additional pages providing the same information as below.]

(a) Parties to the previous lawsuit:

Plaintiffs: _____

Defendants: _____

(b) Name of the court and docket number: _____

(c) Disposition: [For example, was the case dismissed, appealed, or still pending?] _____

(d) Issues raised: _____

(e) Approximate date case was filed: _____

(f) Approximate date of disposition: _____

2. Have you previously sought and exhausted all forms of informal or formal relief from the proper administrative officials regarding the acts alleged in Part C above? [E.g., CDC Inmate/Parolee Appeal Form 602, etc.] ? ☐ Yes ☐ No.

If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No", briefly explain why administrative relief was not sought.

N/A

E. Request for Relief

Plaintiff requests that this Court grant the following relief:

1. An injunction preventing defendant(s):

2. Damages in the sum of \$ 1,500,000
3. Punitive damages in the sum of \$ 500,000
4. Other: As the Court deems fit.

F. Demand for Jury Trial

Plaintiff demands a trial by ☐ Jury ☒ Court. (Choose one.)

G. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 1983 Prisoner cases filed in this district, the Court has adopted a case assignment involving direct assignment of these cases to magistrate judges to conduct all proceedings including jury or bench trial and the entry of final judgment on consent of all the parties under 28 U.S.C. § 636(c), thus waiving the right to proceed before a district judge. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to utilize this efficient and expeditious program for case resolution due to the trial judge quality of the magistrate judges and to maximize access to the court system in a district where the criminal case loads severely limits the availability of the district judges for trial of civil cases. Consent to a magistrate judge will likely result in an earlier trial date. If you request that a district judge be designated to decide dispositive motions and try your case, a magistrate judge will nevertheless hear and decide all non-dispositive motions and will hear and issue a recommendation to the district judge as to all dispositive motions.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including trial, and the entry of final judgment by indicating your consent below.

Choose only one of the following:



Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR



Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

I declare under the penalty of perjury that the foregoing is true and correct.

06-09-08

Date

Lopez Daniel
Signature of Plaintiff

JS44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Daniel Ortiz Lopez

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Luis Obispo
(EXCEPT IN U.S. PLAINTIFF CASES)

255 Number 1974
FILING FEE PAID
DEFENDANT
Yes No
BY MOTION FILED
Yes No
COPIES SENT TO
Court Yes No
NOTED AND CONDEMNATION CASES, USE THE

Pacific Ship Repair

FILED
JUN 16 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *R. V. I.* DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Daniel Ortiz Lopez
PO Box 8101
San Luis Obispo, CA 93409
T-26501

ATTORNEYS (IF KNOWN)

'08 CV 1 068 JLS PCL

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|----------------------------|----------------------------|----------------------------|----------------------------|
| PT | DEF | PT | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
- Citizen of This State
Incorporated or Principal Place of Business in This State
Citizen of Another State
Incorporated and Principal Place of Business in Another State
Citizen or Subject of a Foreign Country
Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. 1983

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(e)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input checked="" type="checkbox"/> 550 Civil Rights			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE

SIGNATURE OF ATTORNEY OF RECORD

CR

R. Muley